

SENATE BILL No. 354

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-8-8; IC 35-42-4-4; IC 35-45-4.

Synopsis: Sex crimes that involve children. Makes child exploitation a Level 4 felony instead of a Level 5 felony. Makes possession of child pornography a Level 5 felony instead of a Level 6 felony. Removes a defense to the crime of prostitution that the person who committed the crime was a child who was less than 18 years of age, and provides that a child who is less than 18 years of age may not be: (1) charged with; or (2) convicted of; committing the crime of prostitution. Makes patronizing a prostitute a: (1) Level 6 felony instead of a Class A misdemeanor if a person has a prior conviction for patronizing a prostitute; and (2) Level 5 felony instead of a Class A misdemeanor if a person paid, or offered payment to, a child who is less than 18 years of age. Makes promoting prostitution a Level 3 felony instead of a Level 4 felony if the person enticed or compelled is a child who is less than 18 years of age. Makes conforming amendments.

Effective: July 1, 2016.

Head

January 11, 2016, read first time and referred to Committee on Corrections & Criminal Law.



Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 354

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 11-8-8-4.5, AS AMENDED BY P.L.168-2014,
2 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 4.5. (a) Except as provided in section 22 of this
4 chapter, as used in this chapter, "sex offender" means a person
5 convicted of any of the following offenses:

6 (1) Rape (IC 35-42-4-1).

7 (2) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).

8 (3) Child molesting (IC 35-42-4-3).

9 (4) Child exploitation (IC 35-42-4-4(b)).

10 (5) Vicarious sexual gratification (including performing sexual
11 conduct in the presence of a minor) (IC 35-42-4-5).

12 (6) Child solicitation (IC 35-42-4-6).

13 (7) Child seduction (IC 35-42-4-7).

14 (8) Sexual misconduct with a minor (IC 35-42-4-9) as a Class A,
15 Class B, or Class C felony (for a crime committed before July 1,
16 2014) or a Level 1, Level 2, Level 4, or Level 5 felony (for a
17 crime committed after June 30, 2014), unless:



- 1 (A) the person is convicted of sexual misconduct with a minor
- 2 as a Class C felony (for a crime committed before July 1,
- 3 2014) or a Level 5 felony (for a crime committed after June
- 4 30, 2014);
- 5 (B) the person is not more than:
- 6 (i) four (4) years older than the victim if the offense was
- 7 committed after June 30, 2007; or
- 8 (ii) five (5) years older than the victim if the offense was
- 9 committed before July 1, 2007; and
- 10 (C) the sentencing court finds that the person should not be
- 11 required to register as a sex offender.
- 12 (9) Incest (IC 35-46-1-3).
- 13 (10) Sexual battery (IC 35-42-4-8).
- 14 (11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen
- 15 (18) years of age, and the person who kidnapped the victim is not
- 16 the victim's parent or guardian.
- 17 (12) Criminal confinement (IC 35-42-3-3), if the victim is less
- 18 than eighteen (18) years of age, and the person who confined or
- 19 removed the victim is not the victim's parent or guardian.
- 20 (13) Possession of child pornography (IC 35-42-4-4(c)).
- 21 (14) Promoting prostitution (IC 35-45-4-4) as a Class B felony
- 22 (for a crime committed before July 1, 2014), ~~or~~ a Level 4 felony
- 23 (for a crime committed after June 30, 2014, **and before July 1,**
- 24 **2016), or a Level 3 felony (for a crime committed after June**
- 25 **30, 2016).**
- 26 (15) Promotion of human trafficking (IC 35-42-3.5-1(a)(2)) if the
- 27 victim is less than eighteen (18) years of age.
- 28 (16) Sexual trafficking of a minor (IC 35-42-3.5-1(c)).
- 29 (17) Human trafficking (IC 35-42-3.5-1(d)(3)) if the victim is less
- 30 than eighteen (18) years of age.
- 31 (18) Sexual misconduct by a service provider with a detained or
- 32 supervised child (IC 35-44.1-3-10(c)).
- 33 (19) An attempt or conspiracy to commit a crime listed in
- 34 subdivisions (1) through (18).
- 35 (20) A crime under the laws of another jurisdiction, including a
- 36 military court, that is substantially equivalent to any of the
- 37 offenses listed in subdivisions (1) through (19).
- 38 (b) The term includes:
- 39 (1) a person who is required to register as a sex offender in any
- 40 jurisdiction; and
- 41 (2) a child who has committed a delinquent act and who:
- 42 (A) is at least fourteen (14) years of age;



(B) is on probation, is on parole, is discharged from a facility by the department of correction, is discharged from a secure private facility (as defined in IC 31-9-2-115), or is discharged from a juvenile detention facility as a result of an adjudication as a delinquent child for an act that would be an offense described in subsection (a) if committed by an adult; and
(C) is found by a court by clear and convincing evidence to be likely to repeat an act that would be an offense described in subsection (a) if committed by an adult.

(c) In making a determination under subsection (b)(2)(C), the court shall consider expert testimony concerning whether a child is likely to repeat an act that would be an offense described in subsection (a) if committed by an adult.

SECTION 2. IC 11-8-8-5, AS AMENDED BY P.L.168-2014, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 5. (a) Except as provided in section 22 of this chapter, as used in this chapter, "sex or violent offender" means a person convicted of any of the following offenses:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).
- (3) Child molesting (IC 35-42-4-3).
- (4) Child exploitation (IC 35-42-4-4(b)).
- (5) Vicarious sexual gratification (including performing sexual conduct in the presence of a minor) (IC 35-42-4-5).
- (6) Child solicitation (IC 35-42-4-6).
- (7) Child seduction (IC 35-42-4-7).
- (8) Sexual misconduct with a minor (IC 35-42-4-9) as a Class A, Class B, or Class C felony (for a crime committed before July 1, 2014) or a Level 1, Level 2, Level 4, or Level 5 felony (for a crime committed after June 30, 2014), unless:
 - (A) the person is convicted of sexual misconduct with a minor as a Class C felony (for a crime committed before July 1, 2014) or a Level 5 felony (for a crime committed after June 30, 2014);
 - (B) the person is not more than:
 - (i) four (4) years older than the victim if the offense was committed after June 30, 2007; or
 - (ii) five (5) years older than the victim if the offense was committed before July 1, 2007; and
 - (C) the sentencing court finds that the person should not be required to register as a sex offender.
- (9) Incest (IC 35-46-1-3).



- (10) Sexual battery (IC 35-42-4-8).
- (11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age, and the person who kidnapped the victim is not the victim's parent or guardian.
- (12) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age, and the person who confined or removed the victim is not the victim's parent or guardian.
- (13) Possession of child pornography (IC 35-42-4-4(c)).
- (14) Promoting prostitution (IC 35-45-4-4) as a Class B felony (for a crime committed before July 1, 2014), ~~or~~ a Level 4 felony (for a crime committed after June 30, 2014, **and before July 1, 2016), or a Level 3 felony (for a crime committed after June 30, 2016).**
- (15) Promotion of human trafficking (IC 35-42-3.5-1(a)(2)) if the victim is less than eighteen (18) years of age.
- (16) Sexual trafficking of a minor (IC 35-42-3.5-1(c)).
- (17) Human trafficking (IC 35-42-3.5-1(d)(3)) if the victim is less than eighteen (18) years of age.
- (18) Murder (IC 35-42-1-1).
- (19) Voluntary manslaughter (IC 35-42-1-3).
- (20) Sexual misconduct by a service provider with a detained or supervised child (IC 35-44.1-3-10(c)).
- (21) An attempt or conspiracy to commit a crime listed in subdivisions (1) through (20).
- (22) A crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in subdivisions (1) through (21).
- (b) The term includes:
 - (1) a person who is required to register as a sex or violent offender in any jurisdiction; and
 - (2) a child who has committed a delinquent act and who:
 - (A) is at least fourteen (14) years of age;
 - (B) is on probation, is on parole, is discharged from a facility by the department of correction, is discharged from a secure private facility (as defined in IC 31-9-2-115), or is discharged from a juvenile detention facility as a result of an adjudication as a delinquent child for an act that would be an offense described in subsection (a) if committed by an adult; and
 - (C) is found by a court by clear and convincing evidence to be likely to repeat an act that would be an offense described in subsection (a) if committed by an adult.
- (c) In making a determination under subsection (b)(2)(C), the court



1 shall consider expert testimony concerning whether a child is likely to
 2 repeat an act that would be an offense described in subsection (a) if
 3 committed by an adult.

4 SECTION 3. IC 35-42-4-4, AS AMENDED BY P.L.80-2015,
 5 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2016]: Sec. 4. (a) The following definitions apply throughout
 7 this section:

8 (1) "Disseminate" means to transfer possession for free or for a
 9 consideration.

10 (2) "Matter" has the same meaning as in IC 35-49-1-3.

11 (3) "Performance" has the same meaning as in IC 35-49-1-7.

12 (4) "Sexual conduct" means:

13 (A) sexual intercourse;

14 (B) other sexual conduct (as defined in IC 35-31.5-2-221.5);

15 (C) exhibition of the:

16 (i) uncovered genitals; or

17 (ii) female breast with less than a fully opaque covering of
 18 any part of the nipple;

19 intended to satisfy or arouse the sexual desires of any person;

20 (D) sadomasochistic abuse;

21 (E) sexual intercourse or other sexual conduct (as defined in
 22 IC 35-31.5-2-221.5) with an animal; or

23 (F) any fondling or touching of a child by another person or of
 24 another person by a child intended to arouse or satisfy the
 25 sexual desires of either the child or the other person.

26 (b) A person who:

27 (1) knowingly or intentionally manages, produces, sponsors,
 28 presents, exhibits, photographs, films, videotapes, or creates a
 29 digitized image of any performance or incident that includes
 30 sexual conduct by a child under eighteen (18) years of age;

31 (2) knowingly or intentionally disseminates, exhibits to another
 32 person, offers to disseminate or exhibit to another person, or
 33 sends or brings into Indiana for dissemination or exhibition matter
 34 that depicts or describes sexual conduct by a child under eighteen
 35 (18) years of age;

36 (3) knowingly or intentionally makes available to another person
 37 a computer, knowing that the computer's fixed drive or peripheral
 38 device contains matter that depicts or describes sexual conduct by
 39 a child less than eighteen (18) years of age; or

40 (4) with the intent to satisfy or arouse the sexual desires of any
 41 person:

42 (A) knowingly or intentionally:



- 1 (i) manages;
- 2 (ii) produces;
- 3 (iii) sponsors;
- 4 (iv) presents;
- 5 (v) exhibits;
- 6 (vi) photographs;
- 7 (vii) films;
- 8 (viii) videotapes; or
- 9 (ix) creates a digitized image of;
- 10 any performance or incident that includes the uncovered
- 11 genitals of a child less than eighteen (18) years of age or the
- 12 exhibition of the female breast with less than a fully opaque
- 13 covering of any part of the nipple by a child less than eighteen
- 14 (18) years of age;
- 15 (B) knowingly or intentionally:
- 16 (i) disseminates to another person;
- 17 (ii) exhibits to another person;
- 18 (iii) offers to disseminate or exhibit to another person; or
- 19 (iv) sends or brings into Indiana for dissemination or
- 20 exhibition;
- 21 matter that depicts the uncovered genitals of a child less than
- 22 eighteen (18) years of age or the exhibition of the female
- 23 breast with less than a fully opaque covering of any part of the
- 24 nipple by a child less than eighteen (18) years of age; or
- 25 (C) makes available to another person a computer, knowing
- 26 that the computer's fixed drive or peripheral device contains
- 27 matter that depicts the uncovered genitals of a child less than
- 28 eighteen (18) years of age or the exhibition of the female
- 29 breast with less than a fully opaque covering of any part of the
- 30 nipple by a child less than eighteen (18) years of age;
- 31 commits child exploitation, a ~~Level 5~~ **Level 4** felony.
- 32 (c) A person who knowingly or intentionally possesses:
- 33 (1) a picture;
- 34 (2) a drawing;
- 35 (3) a photograph;
- 36 (4) a negative image;
- 37 (5) undeveloped film;
- 38 (6) a motion picture;
- 39 (7) a videotape;
- 40 (8) a digitized image; or
- 41 (9) any pictorial representation;
- 42 that depicts or describes sexual conduct by a child who the person



1 knows is less than eighteen (18) years of age or who appears to be less
 2 than eighteen (18) years of age, and that lacks serious literary, artistic,
 3 political, or scientific value commits possession of child pornography,
 4 a ~~Level 6~~ **Level 5** felony.

5 (d) Subsections (b) and (c) do not apply to a bona fide school,
 6 museum, or public library that qualifies for certain property tax
 7 exemptions under IC 6-1.1-10, or to an employee of such a school,
 8 museum, or public library acting within the scope of the employee's
 9 employment when the possession of the listed materials is for
 10 legitimate scientific or educational purposes.

11 (e) It is a defense to a prosecution under this section that:

- 12 (1) the person is a school employee; and
- 13 (2) the acts constituting the elements of the offense were
- 14 performed solely within the scope of the person's employment as
- 15 a school employee.

16 (f) Except as provided in subsection (g), it is a defense to a
 17 prosecution under subsection (b) or (c) if all of the following apply:

- 18 (1) A cellular telephone, another wireless or cellular
- 19 communications device, or a social networking web site was used
- 20 to possess, produce, or disseminate the image.
- 21 (2) The defendant is not more than four (4) years older or younger
- 22 than the person who is depicted in the image or who received the
- 23 image.
- 24 (3) The relationship between the defendant and the person who
- 25 received the image or who is depicted in the image was a dating
- 26 relationship or an ongoing personal relationship. For purposes of
- 27 this subdivision, the term "ongoing personal relationship" does
- 28 not include a family relationship.
- 29 (4) The crime was committed by a person less than twenty-two
- 30 (22) years of age.
- 31 (5) The person receiving the image or who is depicted in the
- 32 image acquiesced in the defendant's conduct.

33 (g) The defense to a prosecution described in subsection (f) does not
 34 apply if:

- 35 (1) the person who receives the image disseminates it to a person
- 36 other than the person:
- 37 (A) who sent the image; or
- 38 (B) who is depicted in the image;
- 39 (2) the image is of a person other than the person who sent the
- 40 image or received the image; or
- 41 (3) the dissemination of the image violates:
- 42 (A) a protective order to prevent domestic or family violence



1 issued under IC 34-26-5 (or, if the order involved a family or
 2 household member, under IC 34-26-2 or IC 34-4-5.1-5 before
 3 their repeal);

4 (B) an ex parte protective order issued under IC 34-26-5 (or,
 5 if the order involved a family or household member, an
 6 emergency order issued under IC 34-26-2 or IC 34-4-5.1
 7 before their repeal);

8 (C) a workplace violence restraining order issued under
 9 IC 34-26-6;

10 (D) a no contact order in a dispositional decree issued under
 11 IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or
 12 IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an
 13 order issued under IC 31-32-13 (or IC 31-6-7-14 before its
 14 repeal) that orders the person to refrain from direct or indirect
 15 contact with a child in need of services or a delinquent child;

16 (E) a no contact order issued as a condition of pretrial release,
 17 including release on bail or personal recognizance, or pretrial
 18 diversion, and including a no contact order issued under
 19 IC 35-33-8-3.6;

20 (F) a no contact order issued as a condition of probation;

21 (G) a protective order to prevent domestic or family violence
 22 issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2
 23 before their repeal);

24 (H) a protective order to prevent domestic or family violence
 25 issued under IC 31-14-16-1 in a paternity action;

26 (I) a no contact order issued under IC 31-34-25 in a child in
 27 need of services proceeding or under IC 31-37-25 in a juvenile
 28 delinquency proceeding;

29 (J) an order issued in another state that is substantially similar
 30 to an order described in clauses (A) through (I);

31 (K) an order that is substantially similar to an order described
 32 in clauses (A) through (I) and is issued by an Indian:

33 (i) tribe;

34 (ii) band;

35 (iii) pueblo;

36 (iv) nation; or

37 (v) organized group or community, including an Alaska
 38 Native village or regional or village corporation as defined
 39 in or established under the Alaska Native Claims Settlement
 40 Act (43 U.S.C. 1601 et seq.);

41 that is recognized as eligible for the special programs and
 42 services provided by the United States to Indians because of



1 their special status as Indians;

2 (L) an order issued under IC 35-33-8-3.2; or

3 (M) an order issued under IC 35-38-1-30.

4 (h) It is a defense to a prosecution under this section that:

5 (1) the person was less than eighteen (18) years of age at the time
6 the alleged offense was committed; and

7 (2) the circumstances described in IC 35-45-4-6(a)(2) through
8 IC 35-45-4-6(a)(4) apply.

9 (i) A person is entitled to present the defense described in
10 subsection (h) in a pretrial hearing. If a person proves by a
11 preponderance of the evidence in a pretrial hearing that the defense
12 described in subsection (h) applies, the court shall dismiss the charges
13 under this section with prejudice.

14 SECTION 4. IC 35-45-4-2, AS AMENDED BY P.L.23-2015,
15 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2016]: Sec. 2. **(a) A child (as defined in IC 35-47-10-3) may
17 not be:**

18 **(1) charged with; or**

19 **(2) convicted of;**

20 **an offense under this section.**

21 ~~(a)~~ **(b)** A person who knowingly or intentionally:

22 (1) performs, or offers or agrees to perform, sexual intercourse or
23 other sexual conduct (as defined in IC 35-31.5-2-221.5); or

24 (2) fondles, or offers or agrees to fondle, the genitals of another
25 person;

26 for money or other property commits prostitution, a Class A
27 misdemeanor. However, the offense is a Level 6 felony if the person
28 has two (2) prior convictions under this section.

29 ~~(b)~~ **(c)** It is a defense to a prosecution under this section that the
30 person was

31 ~~(1) a child (as defined in IC 35-47-10-3); and~~

32 ~~(2) a victim or an alleged victim of an offense under~~
33 ~~IC 35-42-3.5-1~~

34 at the time the person engaged in the prohibited conduct.

35 SECTION 5. IC 35-45-4-3, AS AMENDED BY P.L.158-2013,
36 SECTION 527, IS AMENDED TO READ AS FOLLOWS
37 [EFFECTIVE JULY 1, 2016]: Sec. 3. **(a)** A person who knowingly or
38 intentionally pays, or offers or agrees to pay, money or other property
39 to another person:

40 (1) for having engaged in, or on the understanding that the other
41 person will engage in, sexual intercourse or other sexual conduct
42 (as defined in IC 35-31.5-2-221.5) with the person or with any



1 other person; or
 2 (2) for having fondled, or on the understanding that the other
 3 person will fondle, the genitals of the person or any other person;
 4 commits patronizing a prostitute, a Class A misdemeanor.

5 **(b) However, the offense described in subsection (a) is a:**

6 **(1) Level 6 felony if the person who committed the offense has**
 7 **~~two (2) a prior convictions conviction~~ under this section; or**

8 **(2) Level 5 felony if the person who committed the offense**
 9 **paid, or offered or agreed to pay, a child (as defined in**
 10 **IC 35-47-10-3) under subsection (a).**

11 SECTION 6. IC 35-45-4-4, AS AMENDED BY P.L.158-2013,
 12 SECTION 528, IS AMENDED TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 2016]: Sec. 4. A person who:

14 (1) knowingly or intentionally entices or compels another person
 15 to become a prostitute;

16 (2) knowingly or intentionally procures, or offers or agrees to
 17 procure, a person for another person for the purpose of
 18 prostitution;

19 (3) having control over the use of a place, knowingly or
 20 intentionally permits another person to use the place for
 21 prostitution;

22 (4) receives money or other property from a prostitute, without
 23 lawful consideration, knowing it was earned in whole or in part
 24 from prostitution; or

25 (5) knowingly or intentionally conducts or directs another person
 26 to a place for the purpose of prostitution;

27 commits promoting prostitution, a Level 5 felony. However, the offense
 28 is a ~~Level 4~~ **Level 3** felony under subdivision (1) if the person enticed
 29 or compelled is ~~under eighteen (18) years of age~~: **a child (as defined**
 30 **in IC 35-47-10-3).**

